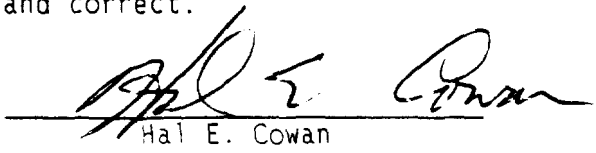


1 I declare under penalty of perjury and the laws of the State of
2 California that the above is true and correct.

3 Dated: July 27, 1993

4 
Hal E. Cowan

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

McCUTCHEN, DOYLE, BROWN & ENERSEN
JOHN N. HAUSER, State Bar No. 24010
DANIEL M. WALL, State Bar No. 102580
FRANK M. HINMAN, State Bar No. 157402
Three Embarcadero Center
San Francisco, California 94111
Telephone: (415) 393-2000

Attorneys for Defendant
The Pacific-10 Conference

**ORIGINAL
FILED**

AUG 16 1993

**CLERK, U. S. DIST. COURT
Eastern District of California**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAPPAS TELECASTING, INC. a
California corporation, and as
Public Trustee,

Plaintiff,

v.

PRIME TICKET NETWORK, a California
Limited Partnership, CVN, INC.,
The PACIFIC-10 CONFERENCE,
a California non-profit association,
CAPITAL CITIES/ABC, INC.,
a New York corporation, and DOES 1
through 20, inclusive,

Defendants.

No. CV-F 92-5589-OWW

DECLARATION OF MIKE D. CORWIN

<p>RECEIVED - CALENDAR</p> <p>14440-7</p> <p>AUG 17 '93</p> <p>Dates to be Entered</p> <p><u>0</u></p> <p><u>Corwin</u></p> <p>This attorney, whose initials appear below, has reviewed A applicable court rules. It has verified that the and dates are correct.</p>

I, Mike D. Corwin, declare:

1. I am the Assistant Athletic Director of Oregon State
University. I have personal knowledge of the matters set forth below, except
those matters stated on information and belief, and, if called, could and
would testify competently to them.

///

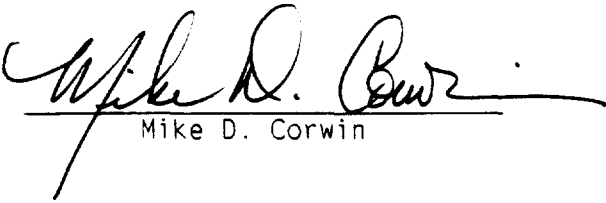
1 2. One of my duties as Assistant Athletic Director is to make
2 arrangements for televising OSU home football games. On September 21, 1991
3 OSU was scheduled to play a home game against Fresno State University
4 ("FSU"). In June 1991, Scott Johnson, FSU's Assistant Athletic Director for
5 Communications called me to arrange for the game to be televised by KMPH in
6 the Fresno area. I believed that Johnson intended to arrange for a delayed
7 telecast for several reasons. First, he never mentioned a live telecast,
8 which is the exception rather than the rule and would have to be negotiated
9 much more extensively. Second, we never discussed any rights fee for the
10 telecast, which OSU would have demanded for a live telecast. Third, OSU had
11 telecast the game between the two teams the previous year, played at FSU, on a
12 delayed basis, and I expected that FSU would do the same. Finally, any
13 negotiations for a live broadcast would be handled by OSU's Athletic Director,
14 Dutch Baughman, not me, and I assumed the same was true at FSU. For my part,
15 I never intended to agree to anything but a delayed telecast.

16 3. In late June 1991 I received a letter from Scott Johnson dated
17 June 26, 1991 concerning the telecast of the September 21 game, a true and
18 correct copy of which is attached as Exhibit A. The letter did not mention
19 anything about a live telecast. In fact, I had no reason to believe that
20 Johnson contemplated a live telecast until Hal Cowan, OSU's Sports Information
21 Director, told me in late August 1991 that he had received a "detail" of the
22 proposed telecast from Howard Zuckerman, KMPH's producer, which indicated that
23 the telecast was to be live. At that time, I called the Pac-10 and was
24 informed that Prime Ticket had selected the California versus Arizona game for
25 cablecast at 7:00 p.m. that evening. I notified Cowan, who, on information
26 and belief, relayed this information to Johnson.

1 4. Scott Johnson was the only person with whom I communicated
2 concerning the telecast of the September 21, 1991 game. Specifically, neither
3 I nor, to my knowledge, anyone else at OSU, communicated with anyone from KMPH
4 concerning the telecast.

5 I declare under penalty of perjury and the laws of the State of
6 California that the above is true and correct.

7
8 Dated: July 27, 1993


Mike D. Corwin



FRESNO STATE UNIVERSITY

Sports Information

5305 N. Campus Drive, Rm. 153 • Fresno, California 93740-0027 • (209) 278-2509 • Fax: (209) 278-4681
Scott Johnson, Director

Mike Corwin, Asst. A.D. 530-737-1547
Oregon State University
Gill Coliseum
Corvallis, OR 97331-4105

6-26-91

Dear Mike:

This letter is to confirm our previous conversation and to thank you for granting permission to televise the football game between our two institutions on September 21, 1991.

We appreciate your cooperation in not charging any rights fees as we will reciprocate in future games at our facility. Mr. Howard Zuckerman is the producer of our telecasts this year as he will be in touch with you for necessary arrangements to be made for the telecast.

Thanks again and best wishes.

Sincerely,

Scott Johnson
Asst. A.D. Communications

Dutch BAUGHMAN (A.D.)

504
LSW
Pae-10

Exhibit "B"

COPY

**ORIGINAL
FILED**
AUG 16 1993
CLERK, U. S. DIST. COURT
Eastern District of California

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. CV-F 92-5589-OWW

DECLARATION OF SCOTT JOHNSON

v.

RECEIVED - CALENDAR
19440-7
AUG 17 '93

Defendants.

... attorney, whose initials
... has reviewed
... applicable court rules,
... verified that the
... are correct.

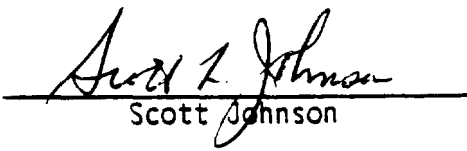
/ / /

1 2. One of my duties as Assistant Athletic Director is to arrange
2 for the telecast of FSU football games. In connection with that duty, in June
3 1991, I made telephone calls to Harold Gibson and Mike Corwin, the Assistant
4 Athletic Directors of Washington State University and Oregon State University,
5 respectively, to arrange for the local Fresno telecast of games between FSU
6 and those schools to be played on September 14 and 21, 1991, respectively.
7 During my conversations with Gibson and Corwin, the subject of whether the
8 telecasts were to be live or delayed was never raised nor discussed. On
9 information and belief, both WSU and OSU normally televise their football
10 games locally on a delayed basis, and I believe it is likely that Gibson and
11 Corwin assumed that I was requesting a delayed telecast as well. I said
12 nothing to give them reason to think otherwise. In addition, the letters I
13 wrote to Gibson and Corwin following up our phone conversations did not
14 specify whether the telecasts were to be live or delayed.

15 3. The games against WSU and OSU were the only away games versus
16 Pac-10 opponents on FSU's 1991 schedule. FSU hosted WSU in 1992 and OSU in
17 1993.

18 I declare under penalty of perjury that the above is true and correct
19 and that this declaration was signed at Fresno, California.

20
21 Dated: July 21, 1993


Scott Johnson

COPY

McCUTCHEN, DOYLE, BROWN & ENERSEN
JOHN N. HAUSER, State Bar No. 24010
DANIEL M. WALL, State Bar No. 102580
FRANK M. HINMAN, State Bar No. 157402
Three Embarcadero Center
San Francisco, California 94111
Telephone: (415) 393-2000

Attorneys for Defendant
The Pacific-10 Conference

ORIGINAL
FILED

AUG 16 1993

CLERK, U. S. DIST. COURT
Eastern District of California

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAPPAS TELECASTING, INC. a
California corporation, and as
Public Trustee,

Plaintiff,

v.

PRIME TICKET NETWORK, a California
Limited Partnership, CVN, INC.,
The PACIFIC-10 CONFERENCE,
a California non-profit association,
CAPITAL CITIES/ABC, INC.,
a New York corporation, and DOES 1
through 20, inclusive,

Defendants.

No. CV-F 92-5589-OWW

DECLARATION OF FRANK M. HINMAN

RECEIVED - CALENDAR

14440-7

AUG 17 '93

Dates to be Entered

The attorney, whose initials
appear below, has reviewed
applicable court rules,
and verified that the
dates are correct.

I Frank M. Hinman, declare:

1. I am a member in good standing of the State Bar of California,
am admitted to practice before this Court, and am an associate at McCutchen,
Doyle, Brown & Enersen, attorneys for defendant the Pacific-10 Conference
(Pac-10). I have personal knowledge of the matters set forth below and, if

1 called, could and would testify competently to them. This declaration is
2 submitted in support of the Pac-10's motion for summary judgment.

3 2. Attached as Exhibit A are true and correct copies of the
4 televised sports listings from the Fresno Bee for Saturday, September 14 and
5 Saturday, September 21, 1991.

6 3. Attached as Exhibit B is a true and correct copy of Pappas'
7 responses to the Pac-10's first set of interrogatories, served on this firm on
8 June 18, 1993.

9 4. Attached as Exhibit C is a true and correct copy of data
10 submitted to the Federal Communications Commission relating to the number of
11 college football games broadcast nationally and regionally from the 1980-81
12 season through last season, and cablecast from 1987 through last season.

13 5. Attached as Exhibit D is a true and correct copy of a document
14 entitled "TELEVISION BROADCASTING AGREEMENT" and signed on behalf of Pappas
15 Telecasting, Incorporated and California State University, Fresno Athletic
16 Corporation, which was produced to the Pac-10 by plaintiff in this case.

17 I declare under penalty of perjury that the foregoing is true and
18 correct and that this declaration was signed at San Francisco, California.

19
20 Dated: August 12, 1993


Frank M. Hinman

EXHIBIT B

GARY E. CRIPE, 'Q.
BAR #076154
CRIPE & GRAHAM
2436 N. Euclid Avenue
Suite 5
Upland, CA 91786

COPY

Attorneys for PAPPAS TELECASTING, INC.

14440-700
JUN 1 1993
Dates to be Entered
cc

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAPPAS TELECASTING, INC. a
California Corporation, and as
Public Trustee,

Plaintiff,

-vs-

PRIME TICKET NETWORK, a
California Limited
Partnership, BILL DANIELS,
JOHN SEVERINO, JERRY BUSS, The
PACIFIC-10 CONFERENCE, a
California non-profit
association, OREGON STATE
UNIVERSITY, WASHINGTON STATE
UNIVERSITY, CAPITAL
CITIES/ABC, INC., a New York
Corporation, ABC SPORTS, INC.,
a New York Corporation, and
DOES a through 20, inclusive,

Defendants.

CASE NO. CV-F-92-5589-OWW
RESPONSES OF PLAINTIFF
PAPPAS TELECASTING, INC.
TO THE FIRST SET OF
INTERROGATORIES OF
DEFENDANT PACIFIC-10
CONFERENCE

PROPOUNDING PARTY: Defendant Pacific-10 Conference

RESPONDING PARTY: Plaintiff Pappas Telecasting, Inc.

Plaintiff PAPPAS TELECASTING, INC ("Pappas") responds to the
First Set of Interrogatories of Defendant PACIFIC-10 CONFERENCE

1 televising of ve college football play. among major college
2 football institutions on Saturday afternoons and Saturday
3 evenings."

4 RESPONSE TO INTERROGATORY NO. 5

5 The FSU vs. WSU and FSU vs. OSU games were scheduled to
6 be broadcast live by KMPH during the afternoons of September 14,
7 1991 and September 21, 1991, respectively. The FSU vs WSU game
8 was scheduled to commence at 2:00 p.m. PST and the FSU vs. OSU
9 game was scheduled to commence at 5:00 p.m. PST. Traditionally,
10 college football has been and continues to be played,
11 predominantly, on Saturday afternoons. There are essentially two
12 three-and-a-half-hour "windows" for broadcasting games live on
13 Saturday afternoons. The preclusive agreements between and among
14 defendants herein prevent broadcasters, such as KMPH, from
15 televising live football telecasts with great local fan interest
16 on Saturday afternoons, even though the games are not scheduled
17 to be broadcast or cable carried by defendants, or anyone else.
18 The number of games with local interest to be televised on
19 Saturday afternoon is, therefore, reduced, the price is driven up
20 because the supply is diminished, viewers are not able to see
21 what they want, broadcasters are unable to compete on a level
22 playing field, and competition is thus damaged as more
23 particularly alleged in the First Amended Complaint.

24 INTERROGATORY NO. 6:

25 Describe the basis for YOUR allegation in paragraph 12
26 of the First Amended Complaint that a relevant submarket is "the
27 televising of . . . so-called 'cross-over' games between members
28 of defendant Pac-10 and members of other football conferences and

1 independents."

2 RESPONSE TO INTERROGATORY NO. 6:

3 The subject games were "cross-over" games. That is a
4 game between a member of one conference (FSU then a member of the
5 Big West Conference) and a member of another conference (WSU and
6 OSU are members of the PAC-10 Conference). The preclusive
7 agreements entered into between and among defendants herein and
8 the tradition of home rule, as more particularly alleged in
9 paragraphs 21-23 of the First Amended Complaint, combined to
10 cause the damage to competition as alleged in the Complaint, and
11 as described in No. 5 above, even when, as in the case of KMPH,
12 broadcasters have preexisting contractual rights.

13 INTERROGATORY NO. 7:

14 Describe the basis for YOUR allegation in paragraph 13
15 of the First Amended Complaint that relevant submarkets are "each
16 of the 60 largest standard metropolitan areas of the United
17 States."

18 RESPONSE TO INTERROGATORY NO. 7:

19 Television markets, including that of plaintiff, are
20 defined, inter alia, by reference to standard metropolitan areas.
21 The preclusive agreements entered into between and among
22 defendants damaged competition, as alleged in the First Amended
23 Complaint, and as described in No. 5 above, within these standard
24 metropolitan areas.

25 INTERROGATORY NO. 8:

26 Describe the basis for YOUR allegation in paragraph 13
27 of the First Amended Complaint that a relevant submarket is "the
28 area of dominant influence ("ADI") of KMPH."

1 RESPONSE TO INTERROGATORY NO. 8:

2 Paragraph A-1 of the contract between FSU and KMPH
3 defines the area of dominant influence ("ADI") of KMPH as the
4 counties of Fresno, Kern, Kings, Madera, Tulare, Mariposa,
5 Merced, Stanislaus, San Benito, San Luis Obispo and San Joaquin.
6 The preclusive agreements entered into between and among
7 defendants herein damaged competition within these geographic
8 areas as more particularly alleged in the First Amended Complaint
9 and as described in No. 5 above.

10 INTERROGATORY NO. 9:

11 Describe the basis for YOUR allegation in paragraph 13
12 of the First Amended Complaint that relevant submarkets are "the
13 service markets of defendants PTN, CAP CITIES/ABC and ESPN."

14 RESPONSE TO INTERROGATORY NO. 9:

15 The preclusive agreements entered into between and
16 among defendants herein damaged competition in these geographic
17 areas as more particularly alleged in the First Amended Complaint
18 and as described in Interrogatory No. 5 above.

19
20 DATED: June 18, 1993

CRIFE & GRAHAM

21
22 BY: [Signature]

GARY E. CRIFE
Attorneys for Pappas
Telecasting, Inc.

Chart 11: National/Regional College Football Games and Ratings on Broadcast TV

<u>Season</u>	<u>No. of Regular Season Games</u>	<u>Average Rating Per Regular Game</u>	<u>No. of Post- Season Games</u>	<u>Average Rating/ Post-Season Game</u>
1980-1981	54	11.5	6	20.9
1981-1982	64	12.0	6	15.2
1982-1983	50	10.8	5	16.6
1983-1984	50	9.8	6	13.5
1984-1985	34	7.4	6	13.1
1985-1986	37	7.0	6	15.6
1986-1987	38	6.9	7	12.7
1987-1988	37	5.1	8	10.0
1988-1989	40	6.2	9	8.6
1989-1990	41	5.9	10	8.3
1990-1991	42	5.5	9	7.8
1991-1992	61	6.5	9	7.7
1992-1993	67	6.2	9	8.7

Data for 1980-82 regular season is ABC data only. Regular season data for 1982-91 is ABC data and CBS data combined. Regular season data for 1991-93 is ABC data and NBC data combined. All post-season data is ABC data and NBC data combined.

Cap Cities/ABC notes that the "number of games" figures reflect all games broadcast. Because ABC often provides regional coverage of these games, there typically are several games broadcast in the same "window" or time period. Similarly, the ratings reflect the average ratings for all games in all time periods in which the games appear.

Cap Cities/ABC Comments, Exhibit A; CBS reply comments, Appendix A; NBC comments, Exhibit D.

**Chart 12: National Broadcast and Cable Network Coverage of College Football Games
(1987-1992)**

<u>Year</u>	No. of Games <u>Broadcast</u> (Nat'l)	No. of Games on <u>Cable</u>
1987	27	54
1988	30	61
1989	29	98
1990	42	196
1991	61	194
1992	67	192
Percent increase from 1987 to 1992:	148%	256%

Broadcast: ABC, CBS, NBC

Cable: ESPN, SportsChannel America, BET, TBS, FNN-Score (no longer operational), Prime Network, USA Network.

NCTA comments, Chart 4 citing Paul Kagan Associates, Inc., Media Sports Business, August 26, 1987, p. 2 and January 21, 1993, p. 8.

EXHIBIT D

17. Page 1
9 13 85
1

TELEVISION BROADCASTING AGREEMENT

THIS AGREEMENT is made and entered into this first day of July, 1985, by and between THE CALIFORNIA STATE UNIVERSITY, FRESNO ATHLETIC CORPORATION, a California Nonprofit Corporation, hereinafter called the "Corporation" and CALIFORNIA SPORTS NETWORK, a California Corporation, and PAPPAS TELECASTING, INCORPORATED, a California Corporation, Licensee of KMPH TELEVISION, hereinafter called the "Contractors".

WITNESSETH:

WHEREAS, Contractors are a television production company and a duly licensed television station, capable of producing and airing live or delayed television broadcasts of athletic events and providing services and materials covered in this agreement; and

WHEREAS, Corporation supervises all National Collegiate Athletic Association (NCAA) recognized sports as related to California State University, Fresno; and

WHEREAS, Corporation desires to arrange for live or delayed television broadcasts and to obtain services and materials as provided herein; and

WHEREAS, Contractors are willing to provide live television broadcasts and other services and materials as provided in this agreement in accordance with the covenants, terms, and conditions hereof:

NOW, THEREFORE, IT IS AGREED as follows:

RIGHTS

A. TELEVISION BROADCASTING RIGHTS

Subject to the covenants, terms, and conditions herein set forth, Corporation grants Contractors the first right of refusal for television broadcast rights of all NCAA sports events sponsored by Corporation.

1. AREA OF EXCLUSIVITY

Said rights shall cover Contractors' (and/or network) Area of Dominant Influence (ADI) which is defined as the Counties of Fresno, Kern, Kings, Madera, Tulare, Mariposa, Merced, Stanislaus, San Benito, San Luis Obispo, and San Joaquin.

2. OFFICIAL STATION

The Corporation shall notify all parties with the need to know that Contractors are the Official Television Station of Corporation sponsored athletic events.

3. NCAA/PCAA EXCEPTIONS

NCAA or PCAA regional and/or national network telecasts supersedes contractual rights for any game.

B. BROADCAST EVENTS

1. Contractors shall televise a minimum of twenty (20) live, mutually agreed upon, NCAA men's basketball contests, home or away, during each year of this agreement;
2. And a minimum of four (4) live football away games and negotiated advanced sell out home games annually.
3. And four (4) additional mutually agreed upon events or programs to be aired live or delayed.

C. TIMES OF EVENTS

1. Times of telecasts shall be mutually agreed upon by Corporation and Contractors.

D. TERM OF AGREEMENT

This agreement shall be for a term commencing on July 15, 1985 and ending June 30, 1988; provided, however that Contractors shall have a two-year option to renegotiate this agreement for the 1988-89 and 1989-90 years. On or before April 15, 1988, Corporation shall provide Contractors with the terms and conditions of the extended agreement. Contractors shall exercise said option on or before May 1, 1988, and the written agreement shall be made and entered into not later than June 1, 1988.

E. RIGHTS FEES

1. Contractors shall pay a total rights fee of sixty thousand dollars (\$60,000.00) for 1985-86 football, basketball, and other events (to be mutually agreed upon).
2. Contractors shall pay a total rights fee of sixty-six thousand dollars (\$66,000.00) for 1986-87 football, basketball, and other events (to be mutually agreed upon).
3. Contractors shall pay a total rights fee of seventy-two thousand six hundred dollars (\$72,600.00) for 1987-88 football, basketball, and other events (to be mutually agreed upon).
4. Corporation shall try to negotiate with all parties involved to waive any rights fees payable to other teams that would normally be charged to the Contractors during the term of this agreement.

5. For each PCAA conference post-season men's basketball game, Contractors shall pay the sum of two thousand dollars (\$2,000.00).
6. Payment of the rights fee shall be made in monthly installments of ten thousand dollars (\$10,000.00) each, starting on the first of each month commencing on August 1 of each contract year until the total amount payable for rights hereby granted has been paid as due during each year of this agreement.

It is understood that the rights fees payable hereunder are in payment of the right to make live telecasts of specified events under the jurisdiction of the Corporation and that in the event of termination of this agreement for nonperformance, there shall be no refund of any portion of the rights fees.

7. Failure to pay the rights fee within 10 days of when due will result in a late fee of 1-1/2% per month on sums due and unpaid.
8. Reserving Right to Receive Statutory Cable Royalty Fees. Contractors and Corporation agree that Corporation shall be entitled to receive all copyright royalty fees attributable to use of the broadcasts, films, videotapes, and recordings of Corporation sports events, including all copyright royalty fees paid by cable systems pursuant to Section 111 of the copyright Revision Act.

PRODUCTION

F. PERSONNEL

1. All production personnel shall be mutually agreed upon by Corporation and Contractors, compensated exclusively by Contractors.
2. Contractors shall provide Corporation, in writing, name(s) of prospective on-air sportscasters and color announcers at least thirty (30) days prior to first telecast of the particular sport for approval by Corporation.

G. PRODUCTION FEES, EXPENSES

1. Contractors shall obtain, at their own expense, all necessary licenses and permits and shall assume all responsibility for and pay all applicable fees and all taxes incurred in conducting the operations encompassed herein, whether within or outside the State of California. Contractors shall be responsible for payment of any and all costs incurred by Contractors, including their agents and employees in connection with telecasts covered under this contract.
2. Contractors shall provide fifty (50) hours of free studio production time per year to Corporation to be utilized at Corporation's discretion. Contractors may determine when the time may be used.